IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-787

KEITH A. DEJAYNES, DIANE M. DEJAYNES, AND RAYMOND E. BURGER, WAGE EARNER TRUSTEE,

Petitioners,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, A CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BARRY M. BARASH,
BARASH & STOERZBACH,
P. O. Box 1328,
139 South Cherry Street,
Galesburg, Illinois 61401,
Counsel for the Petitioners.

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Respondent.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Keith A. DeJaynes, Diane M. DeJaynes and Raymond E. Burger, Wage Earner Trustee, the petitioners herein, PRAY that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on August 16, 1978.

OPINIONS BELOW.

The opinion of the District Court for the Southern District of Illinois, Northern Division, in the case of *DeJaynes* v. *General Finance Corporation of Illinois* is officially reported at 442

F. Supp. 377 (S. D. Ill. 1977), and is printed in Appendix A hereto, *infra*, at page A1. The judgment of the District Court in said case is printed in Appendix B hereto, *infra*, at page A10. The opinion of the Court of Appeals for the Seventh Circuit in *Basham* v. *Finance America Corp.*, which includes *DeJaynes* v. *General Finance Corporation of Illinois*, No. 78-1067, ... F. 2d ..... (7th Cir., August 16, 1978), is as yet unreported, but is printed in Appendix C hereto, *infra*, at page A11. The judgment of the Court of Appeals for the Seventh Circuit in said case is printed in Appendix D hereto, *infra*, at page A33.

JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit in *DeJaynes* v. *General Finance Corporation*, No. 78-1067, was entered on August 16, 1978. The jurisdiction of the Supreme Court is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED.

The sole question presented for review is:

Whether the lender in a closed-end consumer loan is required to state, under 15 U. S. C. § 1639(a), as a separate item of disclosure, the amount of money which the consumer will actually receive "in fist", i.e., the aggregate total of sums paid directly to him or paid to other persons on his behalf.

STATUTES AND REGULATIONS INVOLVED.

This case involves the following statutes and regulations:

1. 15 U. S. C. § 1639(a)(1), (2), (3):

"(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open-end consumer credit plan shall disclose each of the following items, to the extent applicable:

(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

(3) The total amount to be financed [the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)]."

2. 15 U. S. C. § 1640(f):

No provision of this section or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

3. 12 CFR § 226.8(d)(1)("Regulation Z"):

"(d) Loans and other nonsale credit. In the case of a loan or an extension of credit which is not a credit sale, in addition to the items required to be disclosed under paragraph (b) of this section, the following items, as applicable, shall, be disclosed:

(1) The amount of credit, excluding items set forth in paragraph (e) of this section, which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term 'amount financed.' "

STATEMENT OF THE CASE.

The case that is subject of this petition, *DeJaynes* v. *General Finance Corp. of Illinois*, 442 F. Supp. 377 (S. D. Ill. 1977),

was initially filed in the District Court for the Southern District of Illinois, Northern Division, and involves violations of the Truth-in-Lendng Act.

The facts are not in dispute. On November 20, 1976, Keith A. DeJaynes and Diane M. DeJaynes ("consumers") borrowed approximately $854 from the defendant, General Finance Corporation of Illinois ("General"). Prior to consummation of the transaction, General delivered to consumers a copy of its Truth-in-Lending disclosure form. No other documents were delivered to consumers which purported to make the required Truth-in-Lending disclosures. On the face of the Truth-in-Lending disclosure form, General failed to disclose to consumers the net proceeds of the loan, i.e., the "net cash in fist", that they received from General. Specifically, consumers actually received $853.62 as the net loan proceeds. They were charged $37.20 for credit disability insurance and $28.02 for credit life insurance. The "amount financed" was disclosed as $918.84. The finance charge was shown as $290.30, and the total of payments was disclosed as $1,209.14. The gravamen of consumers' complaint is that although the "amount financed" is disclosed as $918.84, consumers actually had the use of $65.22 less, or $853.62, which was the amount of credit of which they had the actual use, or which was paid to them or for their account or to another person on their behalf.

On January 11, 1977, consumers filed a voluntary petition under Chapter XIII of the Bankruptcy Act. A plan of arrangement under the Chapter XIII proceedings was confirmed on March 10, 1977. Raymond E. Burger was appointed as consumer's Wage Earner Trustee.

On September 6, 1977 consumers and the trustee filed a Truth-in-Lending complaint in the United States District Court, alleging that General, *inter alia*, failed to disclose to them the net proceeds of the loan. Plaintiffs and defendant filed cross-motions for summary judgment, both alleging that no genuine

issue of material fact existed, and that each was entitled to judgment in his favor as a matter of law. District Judge Robert D. Morgan ruled that General was not required to disclose the "net proceeds" of the loan to the borrowers.

Consumers and the trustee then appealed the District Judge's decision to the United States Court of Appeals for the Seventh Circuit. In the Court of Appeals, ***DeJaynes*** v. ***General Finance***, No. 78-1067, was consolidated with 18 other Truth-in-Lending cases involving a number of different issues. The 19 consolidated Truth-in-Lending cases were entitled ***Basham, et al*** v. ***Finance America Corp., et al***, Nos. 77-2029 to 77-2032, 77-2179, 77-2180, 78-1058 to 78-1069 and 78-1198, ... F. 2d ..... (7th Cir., August 16, 1978). With respect to the *DeJaynes* appeal, the Seventh Circuit affirmed the District Court's ruling. With regard to the "net proceeds" or "net cash in fist" issue, the Court of Appeals held that although 15 U. S. C. § 1639(a)(1) requires a lender to disclose the net proceeds of a loan in a closed-end situation, Regulation Z does not require that this disclosure be made, and that therefore the lender was excused for any violation by 15 U. S. C. § 1640(f). This section states in part that:

> "No provision of this section or § 112 [15 U. S. C. § 1611] imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the board . . ."

In this petition, the petitioners ask the court to review that portion of the holding of the United States Court of Appeals for the Seventh Circuit which found that General did not violate the Truth-in-Lending Act by failing to disclose to consumers, prior to consummation of the transaction, the net proceeds of the loan or "net cash in fist".

The basis for federal jurisdiction in the District Court in *DeJaynes* v. *General Finance Corp. of Illinois*, 442 F. Supp. 377 (S. D. Ill. 1977) is 15 U. S. C. § 1640(e).

REASONS FOR GRANTING THE WRIT.

I. Conflict Between Circuits.

The decision of the United States Court of Appeals in *DeJaynes* v. *General Finance Corp. of Illinois*, No. 78-1067, ... F. 2d ..... (7th Cir., August 16, 1978), should be reviewed by this court because the Seventh Circuit's ruling conflicts with the ruling of the Fifth Circuit Court of Appeals in *Pollock* v. *General Finance Corp.*, 535 F. 2d 295 (5th Cir. 1976), reheard and affirmed 552 F. 2d 1142 (5th Cir. 1977), cert. den. 434 U. S. 891 (Oct. 11, 1977), and with *Liner* v. *Aetna Finance Corp.*, 555 F. 2d 1241 (5th Cir. 1977).

The loan disclosure form construed by the Fifth Circuit in *Pollock* v. *General Finance Corp., op. cit. supra*, which is reproduced at 535 F. 2d at 297, cannot be factually distinguished from the loan disclosure form used by General Finance Corporation in this case. A copy of the *DeJaynes* loan disclosure statement is printed in Appendix E, *infra* at page .....

The United States Court of Appeals for the Fifth Circuit in *Pollock* v. *General Finance Corp.*, 535 F. 2d 295 at 297 (5th Cir. 1976), expressly held that 15 U. S. C. § 1639(a) requires a lender to disclose to the borrower the amount of credit of which the obligor will have the actual use ("net cash in fist"), and that a mere disclosure of the "amount financed", which includes both the net proceeds of the loan and any charges for credit life and disability insurance is insufficient as a matter of law.

The Fifth Circuit reaffirmed its position after rehearing in *Pollock* v. *General Finance Corp.*, 552 F. 2d 1142 (5th Cir. 1977) and in *Liner* v. *Aetna Finance Co.*, 555 F. 2d 1241 (5th Cir. 1977). In these later cases, the Court stated unequivocally that a lender must disclose the amount of cash given to the debtor or disbursed by the lender on the debtor's behalf.

It is clear in examining the *Pollock* decisions that the Fifth Circuit requires that a lender disclose the "net proceeds of a

loan", in strict conformity with the requirement of 15 U. S. C. § 1639(a)(1), regardless of any provision in Regulation Z. As stated by District Judge Robert D. Morgan in *DeJaynes* v. *General Finance Corp. of Illinois*, 442 F. Supp. 377 (S. D. Ill. 1977),

> "The disclosure statement which gave rise to this suit cannot be distinguished from the debt which was before the court in *Pollock*. The one intervening circumstance is the effect of Section 1640(f) of the Act, which the *Pollock* court held that it need not consider. That circumstance provides no meaningful basis to distinguish *Pollock*, inasmuch as it is yet inherent in the *Pollock* decision that disclosure made in strict reliance upon the Regulation itself was held to be in violation of the Act. Thus, the *Pollock* decision must be respectfully rejected." Id. at 381.

In *DeJaynes*, the Seventh Circuit attempted to distinguish *Pollock* by holding that although 15 U. S. C. § 1639(a)(1) required a lender to disclose the net proceeds of the loan, Regulation Z (12 C. F. R. § 226.8(d)(1)) did not impose this requirement on the lender, and that therefore the lender was excused from liability under 15 U. S. C. § 1640(f). This section insulates the lender from liability for Truth-in-Lending violations whenever it has acted in good faith conformity with any "rule, regulation or interpretation thereof by the Board". However, as District Judge Morgan noted in his opinion, *Pollock* cannot be distinguished from the instant case. The first *Pollock* opinion, 535 F. 2d 295, was decided in 1976, almost two years after original 15 U. S. C. § 1640(f) became effective. The court, in *Pollock*, if it had so decided, could have held that 15 U. S. C. § 1640(f) provided a good defense for the creditor in that case. But it refused to do so. Therefore it is clear that under *Pollock* a lender must disclose the net proceeds of a loan to the consumer pursuant to 15 U. S. C. § 1639(a)(1), regardless of any provision contained in Regulation Z.

Furthermore, the first *Pollock* opinion was decided by the Fifth Circuit on July 16, 1976. Keith and Diane DeJaynes

entered into the transaction which is the subject of this suit on November 19, 1976, some four months later. Without question, when consumers entered into the present transaction, General was on notice that its form, at least in the Fifth Circuit, violated the Truth-in-Lending Act and Regulation Z. For General now to argue that it was acting in "good faith" when it failed to promptly withdraw its disclosure statement from circulation and to revise it to comply with the law is inconsistent with the intent of 15 U. S. C. § 1640(f).

In summary, the Seventh Circuit and the Fifth Circuit are in conflict on the "net cash in fist" issue, and petitioners ask that the conflict between the circuits be resolved by this court.

II. Disclosure of "Net Cash in Fist" Is Required by the Truth-In-Lending Act and Regulation Z.

Both Regulation Z at 12 C. F. R. § 226.8(d)(1) and 15 U. S. C. § 1639(a)(1) require that a lender in a closed-end loan transaction disclose the net proceeds of the loan to the borrower.

15 U. S. C. § 1639(a)(1) requires a creditor to disclose to the consumer,

> "(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf."

15 U. S. C. § 1639(a)(2) requires the lender to disclose to the borrower,

> "(2) all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge."

The corresponding provision of Regulation Z, 12 C. F. R. § 226.8(d)(1) requires the borrower to disclose,

> "(1) The amount of credit, excluding items set forth in paragraph (e) of this section, which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term 'amount financed'."

The requirement to disclose the net amount of loan credit, or "net cash in fist" is mandated both by the statute and by Regulation Z. Petitioners sharply disagree with the Seventh Circuit's conclusion that 12 C. F. R. § 226.8(d)(1) does not require the lender to disclose the net proceeds of the loan. Petitioners argue that a clear reading of Regulation Z demonstrates that this section, like 15 U. S. C. § 1639(a)(1), (2) and (3), requires the lender to disclose separately (A) the amount of credit which will be paid to the customer; (B) all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge; and (C) the total of said two items, using the term "amount financed". To hold that 12 C. F. R. § 226.8(d)(1) requires anything different would be to hold that the Federal Reserve Board knowingly drafted a regulation which conflicts with the terms of the Truth-in-Lending Act as passed by Congress. The Seventh Circuit's construction ignores the fact that the Federal Reserve Board was given the power to draft Regulation Z to implement the Truth-in-Lending Act as passed by Congress, not to contradict it.

CONCLUSION.

The decision of the Seventh Circuit Court of Appeals in *DeJaynes* v. *General Finance Corporation of Illinois* (78-1067), conflicts with the decision of the Fifth Circuit Court of Appeals in *Pollock* v. *General Finance Corporation*, 535 F. 2d 295 (1976), rehearing 552 F. 2d 1142 (5th Cir. 1977), cert. den. 434 U. S. 891 (Oct. 11, 1977). Moreover, the Seventh Circuit has ruled that 12 C. F. R. 226.8(d)(1) and 15 U. S. C.

§ 1639(a)(1) do not require a lender to disclose to the borrower the net proceeds of a loan. This conclusion is clearly violative of the plain language of the statute and of the regulation. For these reasons, petitioners pray that a Writ of Certiorari be granted in this case.

Respectfully submitted,

BARRY M. BARASH,
Counsel for the Petitioners.

October 15, 1978.

BARRY M. BARRASH for
BARASH & STOERZRACH,
P. O. Box 1328,
139 South Cherry Street,
Galesburg, Illinois 61401.

APPENDIX A.

UNITED STATES DISTRICT COURT,
S. D. Illinois, N. D.

Dec. 7, 1977.

KEITH A. DEJAYNES, DIANE M. DEJAYNES, and RAYMOND E. BURGER, Wage Earner Trustee,

Plaintiffs,

vs.

GENERAL FINANCE CORPORATION, OF ILLINOIS, a corporation,

Defendant.

No. 77-1107.

Barry M. Barash, Galesburg, Ill., for plaintiffs.
Barney Olson II, Galesburg, Ill., for defendant.

DECISION AND ORDER

ROBERT D. MORGAN, *Chief Judge.*

The complaint herein arises under the Federal Truth in Lending Act, 15 U. S. C. § 1639, and Regulation Z issued by the Federal Reserve Board in implementation of that Act. 12 C. F. R. 226.6(a), 226.8(a), (b)(2), and (d)(1). Jurisdiction rests upon 15 U. S. C. § 1640(e).

The complaint alleges that the plaintiffs DeJaynes[1] borrowed money from defendant, General Finance, on November 19, 1976, and on that date received from defendant a loan disclosure statement which is attached to the complaint as an exhibit. It is contended that such statement violates the Act and/or Regulation Z, in that: (1) It does not disclose the amount of credit of which the borrowers will have the actual use, either by direct payment to them or by payments to others on their behalf; (2) The disclosures are not made in a logically meaningful sequence, and the same are made in "subtractional" form rather than "additional" form; and (3) The finance charge expressed as an annual percentage rate is not clearly disclosed.

Defendant answered, denying any violation of the Act and affirmatively averring that its disclosures were made in good faith reliance upon regulations and directives issued by the Federal Reserve Board, as the administrator of the Act.

Both parties have moved for summary judgment. There is no dispute as to any material fact. The issue is limited to the question whether the disclosure statement delivered to plaintiffs is legally sufficient to satisfy the requirements of the law.

Plaintiff's complaint rests upon the theory that the statute requires that a disclosure statement must state, as a separate item of disclosure, the amount of money which a borrower will actually receive "in fist," i.e., the aggregate total of sums paid directly to him and sums paid to other persons on his behalf.

This position is based wholly upon the decision in *Pollock* v. *General Finance Corporation*, 535 F. 2d 295 (5th Cir. 1976), on *pet. reh.*, 552 F. 2d 1142 (1977), *cert. denied*, October 11, 1977. That basis of reliance is clear both from their statement of authority filed November 11, 1977, in opposition to defendant's motion, and their motion for summary judgment filed November 14, 1977. Since *Pollock* dealt only with what plain-

1. Plaintiff Raymond E. Burger is the Wage Earner Trustee for the DeJaynes plaintiffs, duly appointed and acting pursuant to the provisions of Chapter XIII of the Bankruptcy Act.

tiffs call the "cash in fist" question, it would thus appear that they are not pressing the "meaningful sequence" or "clear disclosure of rate" contentions. Nevertheless, this decision will deal with the whole range of issues legitimately stated by the complaint.

At the outset, it must be noted that *Pollock* is not a controlling authority in the Seventh Circuit, but that opinion is here fully considered, analyzed and weighed to determine what bearing, if any, it should be given in this case of first impression in this court.

The appeal in *Pollock* sought review of a decision which found several substantive violations of the Act in the disclosure statement there in issue. Included was the failure of such statement to disclose, as a separate item of information, the proceeds of the loan which the borrower would actually receive in the transaction. The disclosures made in the latter regard conformed fully to the requirements of Regulation Z promulgated by the Board. The court held, *inter alia*, that the failure to separately itemize and disclose that figure was a violation of the Act "because the regulation must be read in light of the statute which requires separate disclosures of the amount borrowed." 535 F. 2d at 298.

A petition for rehearing was filed. Therein the creditor argued that it had a good defense to the action under the provisions of § 1640(f)[2] of the Act, in that it had relied in good faith upon a Staff Opinion Letter[3] issued by an employee of the Board. That statute had been enacted while the appeal was pending. In that regard, the court states its opinion that the defense was available

2. "No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason." Pub. L. 93-495, § 406, effective October 28, 1974, 15 U. S. C. § 1640(f).

3. Staff Opinion Letter 870, dated April 10, 1974.

to the defendant, but it held that it need not consider the issue because the penalty imposed against the defendant was justified by other violations of the Act. 552 F. 2d at 1144.

The Board appeared as *amicus curiae* in support of the petition, arguing in its brief that its Regulation Z reflected the Board's expertise as to the requirements for implementation of the Act, that the Regulation was designed to establish a national standard to guide both creditors and consumers on the requirements of the Act, and that the Regulation was designed to abridge certain apparent contradictions embodied in the literal language of Section 1639 of the Act.[4] Although the court recognized that the disclosure statement did comply with the requirements of Regulation Z, it nevertheless adhered to its decision that the proceeds of the loan must be specifically itemized. *Ibid.*, at 1143-1144.

The hallmark of any construction of the Act must be the principle of liberal construction for the protection of the consuming public. Meaningful disclosure "is the byword of the" Act, and rigorous application to insure that the borrower is fully advised in the "frequently incomprehensible jungle" of consumer credit is required. *Johnson* v. *Associates Finance, Inc.*, 369 F. Supp. 1121, 1122 (S. D. Ill. 1974). However, rigorous application should not negate reality. The Act imparts the necessary implication that there must be an amalgamation of both conflicting and compatible interests. Paramount is the interest that the consumer of credit be fully and intelligibly informed about the credit transaction in every event. To that end, demonstrable violations must be strictly penalized. A second, but equally essential, interest is that the purveyors of consumer credit be sufficiently appraised of their obligations under the statute that they may act with confidence that their compliance with ex-

4. It appears that the court did recognize the existence of that contradiction in its initial opinion. *See* reference to language attributed to District Judge O'Kelley, 535 F. 2d at 298. Yet it held in both the initial opinion and the opinion denying rehearing that the literal language of the statute must be read into Regulation Z.

isting regulations will protect them from multifarious litigation. In the absence of a construction of the statute which will accommodate both of those interests, that of the consumer and that of the lender, the national interest becomes a victim.

Congress designated the Board of Governors of the Federal Reserve System as the agency charged with implementation and enforcement of the Act. In that context, it gave the Board broad authority to adopt regulations to implement the Act. 15 U. S. C. § 1604.[5] "To accomplish its desired objective, Congress [by enacting 1604] determined to lay the structure of the Act broadly and to entrust its construction to an agency with the necessary experience and resources to monitor its operation." *Mourning* v. *Family Publications Service, Inc.*, 411 U. S. 356, 364, 93 S. Ct. 1652, 1658, 36 L. Ed. 2d 318 (1973).

Regulation Z was adopted and became effective on July 1, 1969, the effective date of the Act itself. Pub. L. 90-321, § 504 (b), 82 Stat. 167.

The *Pollock* rationale would have the effect of constituting each federal court a super legislature and a super administrator, superimposed above the power and authority which Congress has entrusted to the Board. The purpose of the Act, as defined by Congress, was to assure "a meaningful disclosure of credit terms" to enable the consumer to shop for the best credit terms and "avoid the uninformed use of credit." 15 U. S. C. § 1601. It selected the Board to administer the Act, and accorded to the Board the broad power to promulgate regulations to implement the Act to achieve that purpose. It enjoined lending agencies to comply with the regulations promulgated by the Board. 15

5. Section 1604 provides:

"The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exception for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith."

U. S. C. § 1631(a). The obvious intent of the Act was to create, through Board regulations, national standards governing consumer credit. That result can only be achieved by interaction between the chosen administrative agency and the legislative body. All else is chaos. If each court has the power to determine that a regulation of the Board is incomplete, or that it omits some element which the particular court deems essential, then uniform, national application of the Act is an unattainable myth. The construction of the Act would certainly be as divergent as the several views which each of the courts of appeals might espouse.

Thus, it appears to this court that *Pollock* presumes to usurp a function which is beyond the pale of judicial power. It must be assumed that the Congress has knowledge of the fact and content of Regulation Z. It must be further assumed that the Congress is fully cognizant of the actions taken by the Board in the implementation of the Act. Regulation Z has now been in effect for a period in excess of eight years. During that period of time Congress has amended the Act on several occasions, but none of those amendments has touched or affected the provision of the Regulation with which this litigation is concerned.[6] Congressional acquiescence in the Board's construction of the Act imports congressional approval of what the Board has done. *E.g., National Labor Relations Board* v. *Bell Aerospace Co.*, 416 U. S. 267, 274, 94 S. Ct. 1757, 40 L. Ed. 2d 134 (1974). Against the historical background of this Act and this regulation, a decision imposing disclosure requirements which transcend those mandated by the Regulation would entail a legislative determination under the guise of judicial decision. The assumption of such a power by the courts would place each lending agency in a position of acting at its peril on every consumer loan. Though there be scrupulous compliance with every requirement of the Board's regulation in the consumer

6. Pub. L. 91-508, October 26, 1970; Pub. L. 93-495, October 28, 1974; Pub. L. 94-205, January 2, 1976; Publ. L. 94-222, February 27, 1976; Pub. L. 94-240, March 23, 1976.

credit disclosure made, no such agency could ever be assured that its action could survive the critical scrutiny of some court further down the line in some controversy which would be beyond the realm of foreseeable contemplation.

The disclosure statement which gave rise to this suit cannot be distinguished from that which was before the court in *Pollock*. The one intervening circumstance is the effect of Section 1640(f) of the Act, which the *Pollock* court held that it need not consider. That circumstances provides no meaningful basis to distinguish *Pollock*, inasmuch as it is yet inherent in the *Pollock* decision that disclosure made in strict reliance upon the Regulation itself was held to be a violation of the Act. Thus, the *Pollock* decision must be respectfully rejected.[7]

It is patent upon the face of the disclosure statement given to these plaintiffs that the defendant did meet every requirement of the Board's regulation. Its failure to state, as a separate item of information, the net proceeds of the loan cannot be held to be a violation of the Act.[8]

There is no merit to the further allegations that the disclosures were not made in meaningful sequence in violation of 12 C. F. R. § 226.8(a). The disclosure statement contains a logically sequential series of disclosures beginning with the total amount of required payments, the amount of the finance charge, the amount financed, the charge for credit life insurance, the charge for credit disability insurance, the total number of

7. Plaintiffs' contention that the doctrine of *stare decisis* should influence this court to follow *Pollock* is a misguided invocation of a wholly inapposite legal principle. That doctrine presumes a common identity of jurisdiction in separate causes of action, presenting a common question of law related to identical fact situations. That doctrine can have no application in this cause, inasmuch as the cause presents a legal question of first impression in this jurisdiction.

8. It is not suggested that these plaintiffs were denied this information. A relatively simple mathematical computation would disclose to them the net proceeds figure.

It is also noted that the disclosure form used by this defendant is substantially identical to the form which the Board disseminated to the public as a model form for compliance with Regulation Z.

payments and the annual percentage rate. It further sets forth the date and amount of the first payment required, the amount of each payment subsequent to the first, and the date upon which the last required payment would become due. The court can find no legal deficiency in the sequential presentation, and the court is not really advised by the plaintiffs in what manner the disclosures were alleged to be not "meaningfully sequential."

Nor is there any merit in the second prong of this position that the statements are made "subtractionally" as opposed to an "additional" form. The disclosed items of information proceed in the sequence above recited, beginning with a statement as to the total amount required to be paid, and continuing with disclosures as to the amount of the finance charge and other numbers which are a part of that total figure. The Regulation does require full and meaningful disclosure, but it cannot be construed to prescribe any particular form.

The court is cognizant of certain language in *Allen* v. *Beneficial Finance Company of Gary, Inc.*, 531 F. 2d 797 (7th Cir. 1976), which might be thought to discredit the subtractional method of disclosure. However, each disclosure statement must be considered upon its own merit. The statement involved in *Allen* contained illogical groupings of unrelated numbers, a wholly confusing proliferation and placement of numbers, and a duplication of numbers in one instance. The *Allen* disclosure statement is nowise comparable in form to the disclosure statement with which this court is concerned.

In commentary on *Allen*, the Board, on May 20, 1976, issued its Position Letter No. 1047 stating that the Regulation does not dictate any particular form of statement so long as the placement of disclosure terms used "makes clear the relationship among the various disclosure terms." CCH, Consumer Credit Guide, 13,387. That position was reiterated in an Official Staff interpretation dated March 21, 1977. CCH, Consumer Credit Guide, 13,552.[9]

9. Also pertinent is Public Position Letter 780, dated April 10, 1974, defining "meaningful sequence."

The *Allen* decision and that stated Board position are not deemed to be incompatible. What each requires is that the disclosure form used does state, in a logically meaningful sequence which the average person can comprehend, the information which Regulation Z requires a creditor to disclose.

The contention in this complaint that the annual percentage rate is not clearly disclosed is wholly specious; and it, also, is apparently abandoned by the plaintiffs. The number is to a degree obscured upon the exhibit attached to the complaint, but the same is wholly discernible.

IT IS ORDERED, therefore, that the defendant's motion for summary judgment is Allowed, and the plaintiffs' motion is Denied. Judgment is entered in favor of the defendant at plaintiff's cost.

APPENDIX B.

UNITED STATES DISTRICT COURT
For the Southern District of Illinois, Northern Division

KEITH A. DEJAYNES, DIANE M. DEJAYNES, and RAYMOND E. BURGER, Wage Earner Trustee,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS

Civil Action File No. 77-1107

JUDGMENT

This action came on for decision before the Court, Honorable Robert D. Morgan, United States District Judge, presiding, and the issues having been duly decided and a decision having been duly rendered,

It is Ordered and Adjudged that Defendant's Motion for Summary Judgment is ALLOWED, and the Plaintiff's Motion for Summary Judgment is DENIED. Judgment is entered in favor of the Defendant, General Finance Corporation of Illinois, and against Plaintiffs, Keith A. DeJaynes, Diane M. DeJaynes, and Raymond E. Burger, Wage Earner Trustee, at Plaintiff's costs.

Dated at Peoria, Illinois, this 7th day of December, 1977.

/s/ ROBERT J. KAUFFMAN
Robert J. Kauffman
Clerk of Court

APPENDIX C.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Nos. 77-2029 and 77-2030

DAVID J. BASHAM, LINDA C. BASHAM, GREGORY D. VOGELSANG and DONNA I. VOGELSANG,

Plaintiffs-Appellants,

vs.

FINANCE AMERICA CORPORATION,]XX

Defendant-Appellee.

No. 77-2031

CAREY R. CHILDS, on behalf of himself and all others similarly situated.

Plaintiff-Appellant,

vs.

FIRST NATIONAL BANK OF PEORIA,

Defendant-Appellee.

No. 77-2032

SUSAN M. STEELE,

Plaintiff-Appellant,

vs.

THORP CREDIT, INC., OF ILLINOIS,

Defendant-Appellee.

(Caption continued on following page)

No. 78-1059

VICKIE SHOLL and DEBBIE BRASCHE, on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,

Defendant-Appellee.

No. 78-1060

BRUCE P. DORETHY, on behalf of himself and all others similarly situated,

Plaintiff-Appellant,

vs.

BUSHNELL FINANCE COMPANY,

Defendant-Appellee.

No. 78-1061

JAMES E. ROUNDS,

Plaintiff-Appellant,

vs.

HOUSEHOLD FINANCE CORPORATION,

Defendant-Appellee.

No. 78-1062

DEAN BRASCHE and CHARLENE BRASCHE,

Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,

Defendant-Appellee.

No. 78-1063

JAMES E. ROUNDS,

Plaintiff-Appellant,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,

Defendant-Appellee.

(Caption continued on following page)

No. 78-1064

ROBERT N. SHARP and MARY E. SHARP,

Plaintiff-Appellant,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,

Defendant-Appellee.

No. 78-1065

RICHARD D. CORBIN and CHERI CORBIN,

Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,

Defendant-Appellee.

No. 78-1066

FRED H. TIBBITS, VICKEY L. TIBBITS, and JAMES S. BRANNON, Trustee in Bankruptcy for Fred H. Tibbits,

Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,

Defendant-Appellee.

No. 78-1067

KEITH A. DEJAYNES, DIANE M. DEJAYNES, and RAYMOND E. BURGER, Wage Earner Trustee,

Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,

Defendant-Appellee.

No. 78-1068

JEFFREY C. BROWN and CINDY S. BROWN,

Plaintiffs and Counter-Defendants-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,

Defendant and Counter-Plaintiff-Appellee.

(Caption continued on following page)

No. 78-1069
RICK JOHNSON,
Plaintiff-Appellant,

vs.

MID AMERICA CREDIT, INC., now HEIGHTS FINANCE CORPORATION,
Defendant-Appellee.

No. 77-2179
ROBERT N. SHARP and MARY E. SHARP,
Plaintiffs-Appellants,

vs.

THE FIRST NATIONAL BANK OF PEORIA,
Defendant-Appellee.

No. 77-2180
FORT MADISON BANK & TRUST CO.,
Plaintiff and Counter-Defendant-Appellee,

vs.

CHARLES E. COLLINS and PATRICIA D. COLLINS,
Defendants and Counter-Plaintiffs-Appellants and Third-Party Plaintiffs,

vs.

HART MOBILE HOMES, INC.,
Third-Party Defendant-Appellee.

No. 78-1058
In the Matter of:
WILLIAM ERNEST ANDERSON,
Debtor.
Appeal of:
WILLIAM ERNEST ANDERSON,
Debtor, and
RAYMOND E. BURGER,
Wage Earner Trustee.

(*Caption continued on following page*)

No. 78-1198
SHERYL K. HAWK and FRANKLIN HAWK,
Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,
Defendant-Appellee.

Appeals from the United States District Court for the Southern District of Illinois, Peoria Division.
Civil Nos. 77-1053 and 77-1059, 77-1072, 77-1060, 77-1080, 77-1081, 77-1083, 77-1088, 77-1089, 77-1090, 77-1093, 77-1102, 77-1107, 77-1116, 77-1117, 77-1087, 77-1119 and 77-1120, 77-1139 and 78-1007—Bankruptcy Nos. 77-10547 and 77-10548.
Robert D. Morgan, *Judge.*

Argued June 14, 1978—Decided August 16, 1978

Before CUMMINGS, SPRECHER, and BAUER, *Circuit Judges.*

SPRECHER, *Circuit Judge.* This case is a consolidation of nineteen Truth in Lending actions which were either dismissed or upon which summary judgment was granted for defendants. Numerous issues are raised, the primary ones being the liability of creditors when disclosures are made in conformity with Federal Reserve Board ("Board") regulations, official staff interpretations or unofficial staff letters; the extent of required disclosure by a creditor of a security interest in after-acquired property; the compliance of various loan forms with the requirement that the disclosures therein be made clearly, conspicuously and in meaningful sequence; and whether the one-year statute of limitations on Truth in Lending actions applies to counterclaims filed by a debtor in response to a secured creditor's claim or a claim for reclamation.

I

These appeals arise out of alleged violations of the Truth in Lending Act ("TILA"), 15 U. S. C. §§ 1601, *et seq.*, the regulations promulgated thereto ("Regulation Z"), 12 C. F. R., part 226, the Illinois Uniform Commercial Code ("UCC"), Illinois Revised Statutes 1975, chapter 26, §§ 1-101, *et seq.*, and the Illinois Consumer Fraud Act, Illinois Revised Statutes 1975, chapter 121½, §§ 261, *et seq.*

All of the creditors and the transactions described in the complaints are subject to regulation under TILA, Regulation Z, the Uniform Commercial Code and the Consumer Fraud Act. All of the transactions were consumer credit transactions within the meaning of 15 U. S. C. § 1602(h), in that the party to whom credit was offered or extended was a natural person, and the money, property, or services which were the subject of the transaction were primarily for personal, family, household, or agricultural purposes. All but one of the nineteen appeals involve close-end consumer loans under 15 U. S. C. § 1639.[1]

All of these cases were decided adversely to plaintiffs upon motions to dismiss or motions for summary judgment and therefore turn almost entirely on the resolution of questions of law involving construction of the statute, regulations and loan documents. For this reason, combined with the fact that most of the legal issues involve more than one case, the facts of individual cases will be discussed only where necessary to resolve an issue or where differing facts would dictate a different result. Otherwise, in the interest of brevity, only a general description of the transaction involved will be given.

1. One of the appeals, *Fort Madison Bank and Trust Co.* v. *Collins* (No. 77-2180), is a sale by a mobile home dealer under 15 U. S. C. § 1638. The contract in the *Fort Madison Bank* case was immediately assigned by the dealer to the bank in a typical dealer-paper transaction. No appeal here involves the extension of "open-end" credit under 15 U. S. C. § 1637.

II

Plaintiffs' first claim[2] is that defendants failed to disclose "[t]he amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf" in violation of 15 U. S. C. §1639 (a).[3] This section of the statute requires that a creditor disclose that amount designated by the above quotation in addition to all charges for insurance or other purposes, individually itemized. Finally, these two figures must be added together and disclosed to determine the total amount financed.

2. The twelve cases involving this claim are 78-1059 through 78-1069 and 78-1198. Plaintiffs also argue that cases 77-2029 and 77-2030 involve this claim. A perusal of the record indicates that the original complaints raised only the issue of an improper security interest on the part of defendants in these latter cases. While a motion to amend the complaint in each case was filed, these motions, according to the docket sheet, were withdrawn by plaintiffs on September 2, 1977. Therefore, this issue was neither raised nor ruled upon in the district court and is therefore not before us on appeal in those two cases. For the same reason, plaintiffs' additional claim in 77-2030 that credit life insurance charges were not disclosed is not before us.

Plaintiffs also argue that 78-1058 involves this issue. That case, however, was decided solely on a statute of limitations question and this is the only issue before us on appeal of that case. *See* Part V *infra.*

3. 15 U. S. C. § 1639(a) provides in relevant part:

> (a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:
>
> (1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.
>
> (2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.
>
> (3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

Defendants do not deny that they failed to disclose the amount required by § 1639(a)(1). Rather, they contend that their disclosure forms, which only included the individual itemized charges and the total amount financed, were in full compliance with the Board's Regulation Z §226.8(d)(1), 12 C. F. R. § 226.8(d)(1), which requires disclosure of:

> The amount of credit, . . . which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term 'amount financed.'

A careful reading of this portion of Regulation Z indicates that it requires only the disclosures spelled out in §§ 1639(a)(2) and (a)(3) of the TILA, which defendants here gave, thereby implicitly allowing the actual proceeds of the loan to remain undisclosed.[4]

Assuming, without deciding, that defendants must comply with the statute even where it differs from the Board's regulations,[5] it is clear that failure to disclose the actual proceeds of the loan violates § 1639(a)(1) of the TILA. Thus we are presented with a situation, accounted for by Congress in 15

4. This conclusion is also reached in *Pollock* v. *General Finance Corp.*, 535 F. 2d 295, 298-99 (5th Cir. 1976), *aff'd on rehearing*, 552 F. 2d 1142, 1143-44 (5th Cir. 1977), *cert. denied*, 434 U. S. 891 (1977). It is to be noted, however, that the simple arithmetical procedure of subtraction will yield the "undisclosed" figure.

5. Defendants argue that the Board has authority under 15 U. S. C. § 1604 to provide for variations and exceptions to the statute such as that involved here. While we need not decide that issue in this case, we note that a similar argument was rejected in *Pollock* v. *General Finance Corp.*, 552 F. 2d 1142, 1143-44 (5th Cir. 1977), *cert. denied*, 434 U. S. 891 (1977). Defendants also claim that Congress has acquiesced in the Board's construction of the statute in this manner since 1969 and therefore this construction must be given weight. *See generally Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 313 (1933); *Zemel* v. *Rusk*, 381 U. S. 1, 11 (1965). Given our disposition of the broader issue of liability, we ned not address this argument.

U. S. C. § 1640(f), where action in good faith conformity with Regulation Z is found violative of the TILA:

> No provision of this section or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any intepretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Since defendants' disclosures have followed the requirements of Regulation Z[6] no civil liability may be imposed upon them according to § 1640(f) for having failed to make the disclosure required by § 1639(a)(1). Therefore, the district court properly concluded that no claims existed on this basis.[7]

6. *See also* Federal Reserve Board Letter No. 982 (December 24, 1975) CCH Consumer Credit Guide ¶ 31,321, to the effect that loan proceeds need not be disclosed. The statute itself mandates that disclosures be "in accordance with the regulations of the Board." 15 U. S. C. § 1631(a).

7. Section 1640(f) limits its exemption from liability to "good faith" conformity to regulations and interpretations. We do not reach the issue of whether continued adherence by the creditors to their present form of disclosure after at least one circuit has ruled that it is illegal vitiates their "good faith." *See Pollock* v. *General Finance Corp.*, 535 F. 2d 295 (5th Cir. 1976), *aff'd on rehearing*, 552 F. 2d 1142 (7th Cir. 1977), *cert. denied*, 434 U. S. 891 (1977).

Nor do we decide whether mere coincidental conformity with the Board's regulations are sufficient for exculpation under § 1640(f). *See Jones* v. *Community Loan & Inv. Corp.*, 544 F. 2d 1228, 1231-32 (5th Cir. 1976), *cert. denied*, 431 U. S. 934 (1977). The regulation relied upon here became effective on July 1, 1969, the same day as the TILA, and has never been amended. Reliance on this regulation as initial and continuous guidance in complying with the statute is apparent from the disclosure forms used by defendants.

Finally, in No. 78-1198, the issue of whether a TILA claim passes to the wage earner trustee in a Chapter XIII bankruptcy proceeding is argued. In light of our conclusion that no civil liability exists here, we do not decide that issue. *See also Matter of Dickson*, 432 F. Supp. 752 (W. D. N. C. 1977).

III

Plaintiffs claim that defendants' loan documents attempt to grant the creditor an overbroad and unlawful security interest in the debtors' after-acquired consumer goods.[8] A creditor desiring to hold a security interest must make the following disclosure under 15 U. S. C. § 1639(a)(8):

> A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

Regulation Z, § 226.8(b)(5), 12 C. F. R. § 226.8(b)(5) requires:

> A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to the customer by the creditor as promptly as practicable. If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

8. This issue involves appeals 77-2029 through 77-2032. Plaintiffs claim that 77-2180 is also involved. A perusal of the record indicates that 77-2180 was decided solely on a statute of limitations question and is therefore the issue of a security interest and that case is not before us on appeal. *See* Part V *infra*.

The legal extent of a security interest is determined according to state law and section 9-204(2) of the Illinois Uniform Commercial Code (UCC) ILL. REV. STAT. ch. 26, § 1-101 *et seq.*, provides in relevant part:

> No security interest attaches under an after-acquired property clause to consumer goods other than accessions (Section 9-314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

Therefore, plaintiffs argue that defendants violated section 1639(a)(8) of the TILA and section 226.8(b)(5) of Regulation Z by claiming to cover more than UCC section 9-204(2) allows and by failing to disclose the time limitation imposed on such clauses by this section of the UCC.

The leading case in this circuit on the after-acquired property security interest is *Tinsman*, v. *Moline Beneficial Finance Co.*, 531 F. 2d 815 (7th Cir. 1976). There this court held that disclosures of security interests that fail to indicate state law limitations on such security interests do not fulfill the disclosure requirements of the TILA and Regulation Z. In particular, debtors' security interest there covered more property than allowed by the statute and also did not disclose that any security interest was limited to property acquired within 10 days after the secured party gives value.

The security interest clauses in three of the four cases involved here do not contain any reference to a time limitation.[9]

9. Nos. 77-2029, 77-2030 and 77-2031. No 77-2031 also appears to improperly claim an interest in more than merely accessions. The security agreement states flatly that it "will cover after acquired property," no limitation of the kind of property covered being given. Defendants argue that they have in good faith relied on Exhibit E of the Model Forms provided with a pamphlet entitled, "What You Ought to Know About Truth in Lending" and therefore should be immune from liability under 15 U. S. C. § 1640(f). These forms, however, are merely samples "solely for purposes of demonstration" as the disclaimer at the bottom of the form states. *See Johnson* v.

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This failure to indicate this limitation on the security interest violates the TILA and Regulation Z under our holding in *Tinsman*. *See also Pollock* v. *General Finance Corp.*, 535 F. 2d 295, 300 (5th Cir. 1976), *aff'd on rehearing*, 552 F. 2d 1142, 1144-45 (5th Cir. 1977), *cert. denied*, 434 U. S. 891 (1977); *Johnson* v. *Associates Finance, Inc.*, 369 F. Supp. 1121, 1122-23 (S. D. Ill. 1974).

Defendants, however, claim reliance on unofficial staff opinions of the Board for the contention that the disclosure here was made in good faith reliance upon Board interpretations of the TILA and therefore subject to no civil liability under section 1640(f). *See* Federal Reserve Letters Nos. 829, 983 and 1053, CCH Consumer Credit Guide ¶¶ 31,151, 31,323, and 31,393.[10] This ignores the fact that these unofficial staff opinion letters are explicitly excepted from reliance under Regulation Z, section 226.1(d)(4)(iii). The latest interpretation from the Board, post-dating the staff letters relied on by defendants, is an Official Staff Interpretation which concludes that the statement that a creditor holds "a security interest under the Uniform Commercial Code" is a sufficient description when the creditor obtains a security interest under the UCC. *See* Federal Reserve Board

(Footnote continued from preceding page.)

Associates Finance, Inc., 369 F. Supp. 1121, 1123 (S. D. Ill. 1974); *Bone* v. *Hibernia Bank*, 354 F. Supp. 310, 311 (N. D. Cal. 1973), *reversed on other grounds*, 493 F. 2d 135 (9th Cir. 1974). Reliance on such a form, where it is contrary to the law of the jurisdiction, is not sufficient to insulate defendants from liability under § 1640(f).

10. The extent of reliance on these letters to support defendant's position is itself open to question. Letter 829, August 22, 1974, seems to indicate that the strictures of state law must be followed in describing the security interest. While Letter 983, December 30, 1975, seems to backtrack from this position, Letter 1053, May 28, 1976, followed and stated:

> It appears from your letter that these creditors are disclosing a security interest in "all after-acquired property" or "all after-acquired property including all attachments, substitutions, and replacements." If, in fact, the applicable State law only permits acquisition of a security interest in after-acquired property acquired within a certain period of time, then such a statement would be improper under Regulation Z.

Official Staff Interpretation (November 19, 1976), CCH Consumer Credit Guide ¶ 31,491. Without deciding whether this Official Staff Interpretation is consistent with *Tinsman*, we note that defendants cannot rely on this Official Interpretation since the language in their disclosure forms makes no mention of the UCC.

In holding that defendants cannot rely on the unofficial staff letters under the facts of this case, we realize that such letters are an important informative function of the staff of the Board which, although not binding on a court, are entitled to deference and may prove helpful to a decision in a given case. *Philbeck* v. *Timmers Chevrolet, Inc.*, 499 F. 2d 971, 976-77 (5th Cir. 1974); *Frank* v. *Reserve Consumer Discount Co.*, 398 F. Supp. 703 (D. Pa. 1975). In the instant cases, however, the disclosure forms give a clearly mistaken impression of the extent of time the security interest may be in effect. As we stated in *Tinsman* v. *Moline Beneficial Finance Company*, 531 F. 2d 815, 818 (7th Cir. 1976):

> A reading of the form would lead the debtors to conclude erroneously that the security interest extends to all [consumer] goods . . . at any time the loan agreement is in effect, even though Illinois law precludes such a security interest covering consumer goods acquired more than 10 days after the secured party gives value.

The disclosures required here are not onerous and their uniformity is enhanced by the fact that the UCC has been adopted by 49 states. Moreover, the fact that defendants cannot in actuality claim any greater security interest than is allowed by state law is of no consequence. Although the inclusion of language in the forms which does not limit the security interest to 10 days fails to extend that interest beyond the limited period, it does mislead the consumer. As was stated in *Ives* v. *W. T. Grant Company*, 522 F. 2d 749, 761 (2d Cir. 1975):

> Whether [a debtor] actually retains a security interest is irrelevant. On its face, the contract provides for a security

> interest and for [a debtor] to reveal later that there is none is hardly the type of disclosure Congress thought would "permit consumers to compare the cost of credit among different creditors and to shop effectively for the best credit buy."

Therefore the district court erred in dismissing these claims.

In the fourth case, No. 77-2032, the security agreement explicitly excepts "after acquired consumer goods acquired more than 10 days after the date hereof." Defendant in this case has complied with the TILA and Regulation Z.[11] Dismissal of the complaint was properly allowed by the district court.

IV

The next contention is that defendants[12] violated the TILA and Regulation Z, 12 C. F. R. § 226.6(a), which provides in relevant part:

> (a) Disclosures; general rlue. The disclosures required to be given by this part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections.

11. Plaintiffs also attempt to premise a claim on language in the security interest purporting to cover "all substitutions and replacements." Assuming that substitutions and replacements for collateral cannot be the subject of a security interest after 10 days (*See Tinsman* v. *Moline Beneficial Finance Co.*, 531 F. 2d 815, 816 (7th Cir. 1976), such goods must, by definition, be considered as being "of the same or similar type" as those secured. Thus the 10-day limitation contained in the agreement covers these goods as well:

> Debtor further grants to Secured Party a security interest in all goods, personal property and chattels of the same or similar type or kind to that described above now owned or hereafter acquired, excepting only after acquired consumer goods acquired more than 10 days after the date hereof.

No valid claim of violation is therefore made.

12. This issue involves Nos. 78-1059 and 78-1061 through 78-1069. Plaintiffs also claim that Nos. 77-2029, 77-2030 and 78-1058 involve this issue. For the reasons discussed in note 2 *supra*, however, this issue was not reached in those cases and is not before us on appeal.

See also 15 U. S. C. § 1631(a). This regulation is designed to insure that the disclosures follow a logical order and are not scattered throughout the agreement. *See* Staff Opinion Letter No. 780 (April 10, 1974), CCH Consumer Credit Guide ¶ 31,102.

Allen v. *Beneficial Finance Company of Gary*, 531 F. 2d 797 (7th Cir.), *cert. denied*, 429 U. S. 885 (1976), deals with the issue of meaningful disclosure. According to *Allen*, 531 F. 2d at 801, "meaningful sequence" requires that disclosure statements basically must follow two criteria:

> Thus, meaningful sequence first requires groupings of logically related terms. Second, meaningful sequence requires that the terms in these groupings be arranged in a logically sequential order emphasizing the most important terms.

Plaintiffs complain that the discloure statements make disclosures horizontally instead of vertically. This fact does not, however, make the disclosures misleading. The key factor is reasonable proximity and comprehensibility. As Staff Opinion Letter 780 (April 10, 1974) states:

> We realize that it is not always practical to list the items in vertical order, but in keeping with the purpose of the Truth in Lending Act, they should be placed in reasonable proximity to each other so that the customer will not be required to search for any arithmetical items which should logically follow a previous one.

The forms involved here satisfy this requirement even though the disclosures are horizontal in nature.

Plaintiffs next suggest that the use of a subtractional disclosure in several of the forms violates the "meaningful sequence" rule. While it was noted in *Allen*, 531 F. 2d at 802, 804, that the substractional method is not favored, the court stated that the "requirements of meaningful sequence cannot be applied mechanically or rigidly."[13] In *Allen* the statement

13. Subsequent to the decision in *Allen*, the Board issued Staff Opinion Letter No. 1047 (May 20, 1976), CCH Consumer Credit Guide ¶ 13,387, commenting on *Allen* that no particular form of

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contained some figures listed horizontally and others listed in two vertical columns. Groupings of terms were located at random. The columns of numbers appeared to add up when in reality they did not. The same charge was listed twice under two different titles. The court, 531 F. 2d at 802, described this attempt at disclosure as follows:

> The present defendant has failed in almost every respect to provide disclosures in meaningful sequence in the present disclosure statement. The court below cited ten instances in which the disclosure statement failed to set forth the required information in a meaningful sequence.

In contrast, the subtractional disclosure statements here contain a logically sequential series of disclosures beginning with the total amount of required payments, the finance charge, the amount financed, the charges for credit life, and credit disability insurance, the total number of payments and the annual percentage rate. Perusal of the forms indicate that while this particular sequence is not additional, it is logical and meaningful. This is all that the TILA, Regulation Z and the *Allen* decision require.[14] *See also* Official Staff Interpretation (March 21, 1977), CCH Consumer Credit Guide ¶ 31,552. Therefore, the decision of the district court that the disclosures in these forms were made in a "meaningful sequence" must be sustained.

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statement was required so long as the relationship among the terms is clear, thereby providing the consumer with a clear and adequate basis on which to shop for credit.

14. *See generally* Annotation, "Meaningful Sequence" Requirement of Regulation Z (12 C. F. R., pt. 226.6(a)), 33 A. L. R. Fed. 751 (1977).

V

Two of the cases[15] concern the issue of whether, after filing a petition under Chapter XIII of the Bankruptcy Act, the debtors may respond to a filing of a claim or a reclamation petition by alleging TILA violations on the part of the creditor, even though the TILA claim is beyond the statutory limitation period. Plaintiffs contend that their action is not time barred since their claim is one of recoupment.

The limitation period for TILA claims provides 15 U. S. C. § 1640(e):

> Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

There is no dispute that debtors failed to make a claim within one year from the date of the occurrence. *See also Goldman* v. *First National Bank of Chicago*, 532 F. 2d 10 (7th Cir.), *cert. denied*, 429 U. S. 870 (1976). Rather, debtors claim that somehow their action was revived when creditors made claims in response to debtors filing for voluntary bankruptcy under Chapter XIII. The bankruptcy judge and the district court rejected this claim in both cases.

Failure to bring an action for damages within the one-year limitation period bars the action. *See Jamerson* v. *Miles*, 421 F. Supp. 107 (N. D. Tex. 1976); *Fenton* v. *Citizens Savings Association*, 400 F. Supp. 874 (C. D. Mo. 1975). Where a counterclaim seeks to assert a separate cause of action for an independent wrong, it generally may not be instituted after the

15. Nos. 77-2180 and 78-1058. In 77-2180, plaintiffs also argue that the creditors violated Regulation Z § 226.8(a). For the reasons discussed in note 8 *supra*, this issue is not before us. Also, in light of our disposition of the statute of limitations issue, plaintiffs' further argument relating to the vacating of the default judgment need not be addressed. In any case, the district court has wide discretion in granting such relief. *See* FED. R. CIV. P. 60(b) and Bankruptcy Rules 755(b) and 294.

applicable statute of limitations has expired. *See Smith-Johnson Steamship Corp.* v. *United States,* 231 F. Supp. 184 (D. Del. 1964).

We believe that this rule applies to these cases as well. Debtors argue, however, that a counterclaim is not barred where it seeks "recoupment" rather than affirmative relief. This argument must fail there even assuming that the doctrine of recoupment may assist the claming party in a given situation. *See Bull* v. *United States,* 295 U. S. 247, 262 (1935). The TILA claim presented by debtors seeks affirmative damages under 15 U. S. C. § 1640 (a)(2). They do not claim however that they were actually damaged in any way as a result of the claimed TILA violation.[16] Nor do they claim that the alleged TILA violations somehow negate the validity of the underlying loan transaction.[17] The TILA claim is not directed at or an answer to the underlying debt.[18]

Viewed in this manner, debtors in bankruptcy have brought suit for affirmative relief based on alleged TILA violations. The fact that the creditors being sued have filed claims in the bankruptcy proceeding has no material relevance. Debtors action is barred by the one-year statute of limitations contained in

16. *See* 15 U. S. C. § 1640(a)(1). We express no opinion concerning the availability of a counterclaim after the limitation period where debtors would seek to have the recovery by creditor reduced by the amount of actual damages sustained by debtors in, for example, overpayment of finance charges. *See also* 15 U. S. C. § 1640(h). Certainly, however, such a claim is much closer to the concept of "recouping" something unlawfully taken by the creditor.

17. It has been held that a TILA claim and the underlying loan transaction are not so related as to be the subject of a compulsory counterclaim under Rule 13(a), Federal Rules of Civil Procedure. *See Gammons* v. *Domestic Loans of iWnston-Salem, Inc.,* 423 F. Supp. 819 (M. D. N. C. 1976), and cases cited therein.

18. It has been held that a TILA claim and the underlying loan does not apply to an action for rescission under 15 U. S. C. § 1635. *See Gammons* v. *Domestic Loans of Winston-Salem, Inc.,* 423 F. 1974).

15 U. S. C. § 1640(e).[19] The design of TILA was to provide protection to consumers by affording them meaningful disclosure and thereby an opportunity to shop for credit. It was not designed, nor should it be used to thwart, the valid claims of creditors. The district court properly dismissed these claims on the authority of the statute of limitations.

IV

In *Sharp* v. *First National Bank of Peoria,* No. 77-2197, plaintiffs, husband and wife, allege that defendant failed to give them any documents or discloure statements necessary to comply with the TILA or the Motor Vehicle Retail Installment Sales Act of Illinois, ILL. REV. STAT., ch. 121½, § 573. Defendant filed a motion to dismiss and attached a copy of a loan document signed by Robert N. Sharp. Plaintiffs responded by filing only an affidavit by Mary Sharp. The district court granted defendant's motion to dismiss.

Plaintiffs' claim under the Illinois Statute is without merit. The statute is designed to apply where a retail automobile sales establishment provides or procures financing for the vehicles it sells, not where independent bank fiancing is obtained. *See generally Rivera* v. *Dick McFeely Pontiac, Inc.,* 431 F. Supp. 506 (N. D. Ill. 1977); *Lucas* v. *Park Chrysler Plymouth, Inc.,* 62 F. R. D. 399 (N. D. Ill. 1974). Thus, the section which plaintiffs claim defendant violated provides in relevant part:[20]

19. We recognize that the state courts have split on this question. *See generally* Annotation, Time Limitations Under 15 U. S. C. § 1640(e) on Truth In Lending Suits, 36 A. L. R. Fed. 657 (1978); Note, *Restrictions on Defenses and Counterclaims Based on Truth In Lending Violations,* 13 WAKE FOREST L. REV. 189 (1977). This split is attributable mainly to a variation in state statutes. Even ignoring the questionable use of state statutes to modify a federal cause of action controlled by an explicit federal limitation period, such statutes do not bind the federal courts. *See also* 15 U. S. C. § 1640(h), which denies any offset under § 1640(a)(2) unless the liability has been judicially determined.

20. ILL. REV. STAT., ch. 121½, § 573.

> The seller shall deliver to the buyer a copy of the retail installment contract signed by the seller. Any acknowledgment by the buyer of delivery of a copy of the contract must be printed or written in a size equal to at least 10 point bold type and, if contained in the contract, must appear directly above the legend required above the buyer's signature by paragraph (1) of Section 3. The Buyer's written acknowledgment of delivery of a copy of the contract conforming to the requirements of this Act is conclusive proof of such delivery and of compliance with this Section in any action by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

This section clearly contemplates the situation where the automobile dealer, the "seller,"[21] arranges the financing and is therefore not applicable to the bank in this case.

Regarding the TILA claim, defendant filed a motion to dismiss and attached a copy of the loan agreement signed by Robert Sharp. The loan document provides, above Mr. Sharp's signature, that debtor "acknowledges receipt of a completely filled in copy prior to execution thereof." This acknowledgment by Mr. Sharp created a rebuttable presumption that the required disclosures were made.[22] Mr. Mr. Sharp failed to rebut this presumption by filing an affidavit or otherwise pleading further.

21. ILL. REV. STAT., ch. 121½, § 562.3, defines this term:

> "Retail seller" or "seller" means a person engaged in the business of selling motor vehicles to retail buyers in retail installment transactions.

The bank is not in the business of selling motor vehicles. *See also* ILL. REV. STAT., ch. 121½, § 562.4:

> "Retail installment transactions" means a credit sale of a motor vehicle by a retail seller to a retail buyer for a deferred payment price payable in one or more installments.

22. 15 U. S. C. § 1635(c) provides:

> Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

The dismissal of the TILA claim was therefore proper.[23] *See Whitlock* v. *Midwest Acceptance Corp.*, 76 F. R. D. 190 (E. D. Mo. 1977).

VII

Plaintiffs' final claim is that the district court improperly dismissed the class action request in *Childs* v. *First National Bank of Peoria*, No. 77-2031.[24] In this case the complaint consisted of six counts, three of which were for class action relief and three of which were for individual relief. The district court dismissed the entire compaint, including the class action counts.

While the reasons for the dismissal of the class action counts by the district court are not clear from the record provided on appeal,[25] the district judge was not required to reach the issue since the individual substantive claims by plaintiff were dismissed.[26] In light of our holding in Part III that this plaintiff has

23. Plaintiffs argue that the filing of an affidavit by Mary Sharp should be sufficient. However, both the purchase agreement and the loan documents are signed by Robert Sharp alone. The loan agreement provides a place for a second debtor or co-signer to sign, but this space is left blank. It appears that Mary Sharp did not obligate herself in any way to defendant and therefore would not be entitled to disclosure. Her affidavit adds nothing to Robert Sharp's claim.

In addition, if plaintiffs could have stated a claim under the Illinois Motor Vehicle Retail Installment Act, Mr. Sharp's acknowledgment would provide "conclusive proof" of delivery according to the terms of that statute.

24. Plaintiffs also argue that this issue involves No. 78-1060. In light of our holding in Part II of this opinion that the substantive cause of action was properly dismissed, we need not reach the class action issue in that case. In addition, defendants seem to believe that No. 78-1059 is also involved (Defendants' Brief p. 62). Plaintiffs do not argue this issue in their briefs with regard to this case (Plaintiffs' Brief pp. 93-102; *but see* p. 9). In any case, because of our conclusions in Parts II and IV that the substantiive claims in this case were properly dismissed, we need not reach the class action issue.

25. Apparently the motion to dismiss was granted at an oral hearing on September 6, 1977. The transcript of that hearing has not been provided to this court.

26. For example, the district court may have concluded that, since plaintiff's individual claims were meritless, plaintiff could not adequately represent the class for purposes of securing relief. Since the district court's reasons have not been presented to us, however, this is merely a surmise.

stated a cause of action under TILA, we direct the district court, on remand, also to consider the class action allegations of the complaint in this case.

VIII

The disposition of the cases in this appeal is as follows: Nos. 77-2032, 77-2197, 77-2180, 78-1058 through 78-1069, and 78-1198 are affirmed; Nos. 77-2029, 77-2030 and 77-2031 are reversed and remanded for further proceedings consistent with this opinion.

AFFIRMED IN PART;
REVERSED IN PART.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX D.

OPINION BY JUDGE SPRECHER
UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

August 16, 1978.

Before
HON. WALTER J. CUMMINGS, *Circuit Judge*
HON. ROBERT A. SPRECHER, *Circuit Judge*
HON. WILLIAM J. BAUER, *Circuit Judge*

Appeals from the United States District Court, for the Southern District of Illinois, Peoria Division.

Nos. 77-2029 through 77-2032, 78-1059 through 78-1069, 772179, 77-2180, 78-1058, and 78-1198

DAVID J. BASHAM and LINDA C. BASHAM, et al.,
Plaintiffs-Appellants,

vs.

FINANCE AMERICA, CORPORATION, et al.,
Defendants-Appellees.

Nos. CV 77-1053, CV 77-1059, CV 77-1072, CV 77-1060, CV 77-1080, CV 77-1081, CV 77-1083, CV 77 1088, CV 77-1089, CV 77-1090, CV 77-1093, CV 77-1102, CV 77-1107, CV 77-1116, CV 77-1117, CV 77-1087, CV 77-1119, CV 77-1120, CV 77-1139, CV 78-1007,

These causes came on to be heard on the transcript of the record from the United States District Court for the Southern District of Illinois, Peoria Division, and were argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgments of the said District Court in these as to cases Nos. 77-2032, 77-2197, 77-2180, 78-1058 through causes appealed from be, and the same hereby, Affirmed as to cases Nos. 77-2032, 77-2197, 77-2180, 78-1058 through 78-1069, and 78-1198; and are Reversed and Remanded as to Nos. 77-2029, 77-2030, and 77-2031, all cases are with costs, in accordance with the opinion of this court filed this date.

Combined Note and Disclosures Required by Federal and State Law.

LENDER: GENERAL FINANCE CORPORATION OF ILLINOIS
103 EAST MAIN STREET
GALESBURG, ILLINOIS 61401
41-3315 PHONE 342-6141

BORROWERS (NAMES AND ADDRESSES)

[redacted]

DATE	FIRST INSTALLMENT DUE DATE	OTHERS	FINAL INSTALLMENT DUE DATE	FIRST	OTHERS
11/19/76	[illegible]/77	SAME DAY EACH MONTH	[illegible]/80	$ 87.14	$ [illegible]

TOTAL OF PAYMENTS	FINANCE CHARGE	AMOUNT FINANCED	CREDIT INSURANCE CHARGES LIFE	DISABILITY
$ [illegible]	$ [illegible]	$ [illegible]	$ [illegible]	$ [illegible]

TOTAL AMOUNT PAYABLE	UNIT CHARGE (FOR PREPAYMENT, DEFAULT OR DEFERMENT CHARGES)	OFFICIAL FEES	SECURITY INTEREST	WAGE ASSIGNMENT
$ [illegible]	$ [illegible]	$ [illegible]		

ANNUAL PERCENTAGE RATE [illegible] %

CREDIT LIFE OR DISABILITY INSURANCE IS NOT REQUIRED TO OBTAIN THIS LOAN. If Borrowers desire credit life (decreasing term) insurance or bit life (decreasing term) and disability insurance, the charge(s) therefor stated above will be deducted from the Amount Financed and the insurance covers Borrower(s) named in the certificate(s) of insurance delivered herewith. The term of credit life or credit life and disability insurance is the originally scheduled n of the loan. No charge is made for credit insurance and no credit insurance is provided unless one of the Borrowers desiring insurance signs the appropriate ement below.

I desire Credit Life insurance.	*We desire Joint Credit Life insurance.*	*We desire Joint Credit Life and Single Disability insurance.*
Borrower's Signature — *Date*	*1st Borrower's Signature* — *Date*	*1st Borrower's Signature* — *Date* 11/20/76
ire Credit Life insurance and Disability insurance.		
Borrower's Signature — *Date*	*2nd Borrower's Signature* — *Date*	*2nd Borrower's Signature* — *Date* [illegible]

YOU HAVE THE RIGHT TO CHOOSE THE PERSON THROUGH WHOM ANY AUTO PHYSICAL DAMAGE INSURANCE IS TO BE OBTAINED.

reby authorize Lender to obtain Auto Physical Damage insurance, for the term of _____ months, the cost of which is stated above, on the auto cribed below and acknowledge receipt of a copy of the terms of such insurance, bearing even date herewith.

_____ Date
Borrower's Signature

YOU ARE NOT SATISFIED FOR ANY REASON WITH THE CREDIT LIFE, CREDIT LIFE AND DISABILITY OR AUTO PHYSICAL DAMAGE SURANCE PURCHASED, you may return within 15 days from the date of this loan, for cancellation, the Certificate(s) of Insurance and a refund of the full mium paid will be made.

TOTAL OF PAYMENTS is the Amount Financed plus the Finance Charge and is the amount required for payment according to schedule, and is the amount of note.

AMOUNT FINANCED includes any amounts deducted for Official Fees, any charges for Credit Life and/or Disability insurance, and Auto Physical Damage insurance, and is principal amount of loan.

OFFICIAL FEES are paid to public officials for perfecting or releasing a security interest in personal property.

UNIT CHARGE is the amount of Finance Charge rebate that would be required for prepayment in full one full month prior to the final due date.

FINANCE CHARGE - CONTRACT RATE - ANNUAL PERCENTAGE RATE. The Finance Charge is precomputed at the monthly interest rates on the scheduled unpaid balances of the Amount Financed at a contract rate of 2½% per month on that part of the unpaid principal balance not exceeding $300.00, 2% per month on any part thereof exceeding $300.00 and not exceeding $600.00; and 1½% per month on any part thereof exceeding $600.00, but not exceeding $1500.00, as provided by Sections 13(a), (c) and (e) of the Illinois Consumer Finance Act printed on the reverse side hereof. The Annual Percentage Rate when computed by the actuarial method for payment according to schedule yields the Finance Charge, but is not the contract rate.

PREPAYMENT REBATE. The Borrower may prepay the loan in full at any time prior to maturity and receive a rebate of the then unearned Finance Charge. The amount of the rebate will be at least as great a proportion of the precomputed interest, excluding any adjustment of interest for a first period of more or less than one month, as the sum of the remaining monthly balances of principal and interest combined scheduled to follow the installment date nearest the date of prepayment bears to the sum of all the monthly balances of principal and interest combined originally scheduled by the contract.

DEFAULT AND DEFERMENT CHARGES. If any installment remains unpaid more than five (5) days after its due date, the holder hereof may elect to either (1) charge an amount for each such installment in default equal to one Unit Charge, or (2) defer the payment dates of all the then unpaid installments one or more full months and charge a deferment charge equal to one Unit Charge for each unpaid installment. A deferment charge will be charged for each full month from the date of default until one full installment is paid. Default or deferment charges may be collected at the time of default or deferment or at any time thereafter. Such charges are due on demand. When a deferral charge is collected, the due date of each unpaid installment shall be deferred by the number of months for which such deferral charge is collected and thereafter any required rebate of Finance Charge shall be computed from the deferred due dates instead of the due dates originally contracted for. The parties may agree, at any time prior to default of any installment or part thereof, to defer the payment date(s) of any installment(s) and the Lender may charge for such deferment at the rate stated in (2) above.

RIGHT TO CONVERT. If two or more installments are delinquent one month or more on any due date, the holder may reduce the contract balance by the rebate which would be required for prepayment in full on such due date and thereafter receive Finance Charges at the contract rate on actual unpaid balances of the contract for the time actually outstanding until the contract is fully paid. Finance Charges so received shall be in lieu of the rebated Finance Charge and any default or deferment charges which would otherwise accrue after the due date as of which the rebate was made.

SECURITY. This loan is secured by this note and any Credit insurance, and by the proceeds of any Auto Physical Damage insurance for which a charge is made as stated above. If "YES" appears under "Security Interest" above, there is a Security Agreement on consumer goods, listed below, belonging to Borrowers. The Security Agreement may secure future advances or other indebtedness. If "YES" appears under "Wage Assignment" above, there is an assignment of your salary and wages. A security interest in Borrower's personal property is created by the confession of judgment clause herein.

SECURITY: GOODS LISTED BY SCHEDULE A BEARING EVEN DATE HEREWITH

Make	*Model*	*Identification No.*	*Type*	*Year*
[illegible]				

(Complete with all equipment, parts and accessories now thereon)

THE UNDERSIGNED, in consideration of the loan described above and made by the corporation named above, hereby jointly and severally promise, subject to the terms hereof, to pay at its above office the Total of Payments plus delinquency or deferral charges as stated above.

Payment shall be made in consecutive monthly installments as above indicated beginning on the stated due date for the first installment. All payments made on this note at any time shall be applied to installments in the order they fall due, until the indebtedness hereunder is paid in full. When the holder's office is not open for business on a stated due date, such due date shall be the next succeeding business day. The unpaid balance of this note, or any part thereof, may, at the option of the Borrower, be paid at any time. Default in the payment of any installment, or any part thereof, shall, at the option of the holder hereof, without notice or demand, render the then unpaid balance hereof, less Finance Charge rebate, at once due and payable. Default in the payment of any installment may be discussed with any present or future employer. The undersigned severally waive demand for payment, notice of nonpayment, protest and notice of protest of this note and consent to extension of time of payment without notice.

To secure payment hereof, the undersigned, jointly and severally, irrevocably authorize any attorney of any court of record to appear for any one or more of them in such court, in term time or vacation, after default in payment hereof, and confess a judgment without process in favor of the holder hereof for such amount as may then appear unpaid hereon; to release all errors which may intervene in any such proceedings; and to consent to immediate execution upon such judgment; hereby ratifying every act of such attorney hereunder. Notwithstanding any provision hereof or of applicable law, holder irrevocably waives and releases all right to make a judgment confessed hereon a lien on any real property now or hereafter owned by the undersigned or in which the undersigned may now or hereafter have an interest.

This agreement binds the successors, heirs, and assigns of the parties hereto. The construction, validity, and effect hereof shall be governed by the laws of Illinois, except as modified by the Federal Consumer Credit Protection Act.

BORROWERS ACKNOWLEDGE RECEIPT OF AN EXACT AND COMPLETELY FILLED IN COPY OF THIS DOCUMENT AND CERTIFICATES EVIDENCING ANY REQUESTED INSURANCE.

DATE Nov 19 76.

WITNESSES:

D.C Dunsworth

J Johnson

K. I Clay (SEAL)

(SEAL)

(SEAL)

4163 (1-76)

NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION

BORROWER'S COPY

APPENDIX E A350